

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

NICA, INC.

Employer

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 25, AFL-CIO

Petitioner

Case 1-RC-21781

DECISION AND DIRECTION OF ELECTION¹

International Brotherhood of Teamsters, Local 25, AFL-CIO (Petitioner or Union) filed the petition in this matter, in which it seeks to represent a bargaining unit consisting of all full-time and regular part-time office clerical employees employed by NICA, Inc. (Employer) in its operations department, settlements department, and customer service department at its facility in Braintree, Massachusetts.²

¹ Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

² The unit set forth in the petition is "All full-time and regular part-time office employees." At the hearing, the Union clarified its position and stated that it wished to represent a unit of office clerical employees confined to the Employer's operations, settlements, and customer service departments.

The Employer contends that its operations are highly integrated and that the smallest appropriate unit must include office clerical employees in the operations department, settlements department, customer service department, sales department, legal department, accounting and finance department, and tax department.

I find, in agreement with the Employer, that a unit limited to the office clerical workers in the operations, settlements, and customer service departments is not an appropriate unit inasmuch as these employees do not possess a community of interest sufficiently separate from the Employer's other office clerical employees to warrant their inclusion in a separate unit. Rather, I conclude that the smallest appropriate unit must include all office clerical employees in the operations, settlements, customer service, legal, accounting and finance, and tax departments. I also find that there is insufficient evidence to determine whether the sales department employees should be included in this clerical unit. Accordingly, I shall permit them to vote under challenge.

The Employer also maintains that employee Erin Sheehan is a statutory supervisor by virtue of her authority to make, and/or effectively recommend, layoff and firing decisions; make, and/or effectively recommend, discipline, transfer, and layoff decisions; responsibly to direct subordinates; train subordinates; and oversee subordinates' time off. I find that Sheehan is a non-supervisory employee, and I have, therefore, included her in the unit found appropriate.

Finally, the Union takes the position that David Kenyon, the brother-in-law of the Employer's owner, and Sabrina Greenfield, the owner's niece, should be excluded from the unit because of their relationship to the Employer's owner. For the reasons set forth below, I find that Kenyon enjoys a special status by reason of which he should be excluded from the unit, while Greenfield does not enjoy any such special status and should, therefore, be included in the unit.

THE APPROPRIATE UNIT:

FACTS

Employer's business and structure

The Employer, a Massachusetts corporation with its principal place of business in Braintree, Massachusetts, provides financial, insurance, and other services to the transportation industry. It does business in about 40 states by providing tax, legal, and financial services to companies that contract with independent contractors. It also provides tax, legal, and financial services to the independent contractors. The Employer helps their customers maintain their status as contracting companies or independent contractors, and helps them to resolve issues concerning taxes, unemployment insurance, and workers' compensation. The record is silent as to any history of collective bargaining at the Braintree location.

There is a total workforce of approximately 56 who work at the Braintree location, which covers about 5,000 square feet of office space. There are only a few enclosed rooms in this space. These include a conference room, the president's office, the general manager's office, the

sales office, and an office for the head of the legal department. The remaining space is undivided by walls. In this large open space each employee has a cubicle.

Management and Supervision

Thomas M. McGrath is the Employer's founder, president, and chief executive officer, and owns 100 percent of the Employer's stock. Reporting to McGrath is Andrew Rogantino, the general manager. Reporting to Rogantino is John Ptak, who oversees the operations department, the settlements department, and the customer service department. Also reporting to Rogantino are Wesley McClure, the manager of the legal department, and Rich Durham, the manager of the tax department and the accounting and finance department. Terrence Patterson handles human resource matters for the Employer.³

Sales department -

The sales department is the only department located in an enclosed room separate from the other departments. The seven employees in the sales department have access through a door to the open area where the other departments are located. The sales employees package the services offered by the Employer to suit customers' particular needs. Although the Employer markets itself by advertisement and word of mouth, sales employees sometimes go on the road to meet with customers or prospective customers. They also attend conventions for this purpose. The sales employees spend some of their time at the Braintree location taking orders or otherwise communicating with customers or prospective customers by telephone or computer.⁴ No special education or training is required for the sales department employees.

Accounting and finance department -

The accounting and finance department, which includes a sub-department called the banking department, is responsible for cutting the Internal Revenue Service 1099 forms that are sent out every year. Its employees oversee the 300 to 400 hundred bank accounts the Employer maintains across the United States. They are also responsible for providing a service to the Employer's customers that is similar to a payroll service. The contracting companies that are the Employer's customers fund the 300 to 400 hundred bank accounts, and the Employer cuts checks from these accounts that go to the independent contractors who contract with the contracting companies. The accounting and finance department employees make sure that the correct amount of money is transferred to the correct bank account. They also make sure that the checks that are cut on those accounts are properly funded. No special education or training is required for the accounting and finance department employees.

³ It is not clear from the record to whom Patterson reports. At the hearing, the parties stipulated that Rogantino, Ptak, McClure, Durham, and Patterson are supervisors within the meaning of Section 2(11) of the Act, and I so find.

⁴ It is not clear from the record how much of their time the sales employees spend at the Braintree location and how much they spend on the road.

Settlements department -

The settlements department receives the checks from the Employer's customers that are destined for the Employer's bank accounts. Its employees put these checks into the system and then cut checks that they send to the customers for distribution to the independent contractors. They are also responsible for reconciling the accounts. No special education or training is required for the settlements department employees.

Legal department -

The legal department is made up of two attorneys, one of whom is McClure, two paralegals, and a secretary. They try to resolve customer issues that come up concerning independent contractor status, unemployment claims, or workers' compensation claims. Legal department employees communicate with a network of attorneys around the United States who provide legal services for the Employer's customers. No special education or training is required for the paralegals or the secretary in the legal department.

Tax department -

The tax department maintains tax escrow accounts for independent contractors, answers their tax-related questions, and prepares their tax returns at the end of the year. No special education or training is required for the office clerical employees in the tax department.

Customer service department -

The customer service department answers telephone calls from customers with questions or problems. Its employees try to provide the requested information or resolve the customer's problem, rather than just forwarding the call to another department. No special education or training is required for the office clerical employees in the customer service department.

Operations department -

For the most part, the employees in the operations department support the other departments. They order the supplies for the other departments. The receptionist in the operations department answers incoming telephone calls and either provides information to the caller or directs the call to the appropriate department. The operations department also performs "compliance and education" functions. These involve pro-actively helping the independent contractors to maintain such things as licenses and tax identification numbers and handling direct deposits. No special education or training is required for the office clerical employees in the operations department.

Pay and Benefits

All the Employer's employees, with the exception of one or two part-time employees, are salaried. They all receive the same benefits and are covered by the same employee handbook. Most of the employees work approximately the same hours, starting at 8 or 9 a.m. and finishing at 5 or 6 p.m.⁵ They have a one hour lunch period.

Interchange and Contact Among Employees

There has been some interchange of employees between departments during the past year. At least two employees have moved from one department to another. Ivette Cartagena transferred from the settlements department to the legal department. Sabrina Greenfield transferred from the settlements department to the operations department. A third employee, Konstantina Papadopoulos, works each day as both a receptionist in the operations department and as a secretary in the legal department.

Each day there is also considerable contact between the employees of the various departments. The operations department interacts with all the other departments in its role as the support group for the rest of the staff. The employees in the settlements department and the finance and accounting department have daily contact as they process the checks going into the bank accounts and the checks being drawn on those accounts. Similarly, when the tax department employees need information to prepare tax returns or answer tax questions, they usually need to rely on information from the employees in the settlements department and the finance and accounting department.

Integration of Functions

The functions of some of the departments are integrated or overlap. For example, in their efforts to resolve customer problems, customer service department employees or operations department employees may perform a function usually done by another department. If a customer has a problem with its Internal Revenue Service 1099 form, the customer service employee or operations employee may provide information, or even the document itself, despite the fact that this function would usually be done by the accounting and finance department.

ANALYSIS

It is well settled that a union need not seek to represent the most appropriate unit or most comprehensive unit, but only an appropriate unit. *Transerv Systems*, 311 NLRB 766 (1993); *Morand Bros. Beverages Co.*, 91 NLRB 409 (1950). In determining unit scope, the Board first considers the petitioning union's proposals. If the unit sought is appropriate, the inquiry ends. If it is inappropriate, the Board will scrutinize the employer's proposals. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989).

⁵ Settlement department employee Kristen Hayden works from approximately 12 noon until 8 p.m.

In deciding whether a unit is appropriate, the Board weighs various factors, including differences or similarities in the method of wages or compensation, hours of work, employment benefits, supervision, working conditions, job duties, qualifications, training, and skills. The Board also considers the degree of integration between the functions of employees, contact with other employees, and interchange with other employees, as well as history of bargaining. *Overnite Transportation Co.*, 322 NLRB 723, 724, (1996), citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). The petitioner's desire as to the unit is a relevant consideration, though not dispositive. *Florida Casino Cruises*, 322 NLRB 857, 858 (1997), citing *Airco, Inc.*, 273 NLRB 348 (1984). The Board's general policy is that a segment of an employer's office clerical employees is not an appropriate unit. *Aurora Fast Freight, Inc.*, 324 NLRB 20, 21 (1997).

I find that the unit, as sought by the Petitioner, of office clerical employees confined to the Employer's operations, settlements, and customer service departments, is inappropriate. Rather, I find that the smallest appropriate unit must also include all office clerical employees in the legal department, accounting and finance department, and tax department, inasmuch as these employees share such a community of interest with the operations, settlements, and customer service departments that, without their inclusion, the sought-after employees would constitute a unit fragment.

The office clerical employees in the operations, settlements, and customer service departments do not have wages, benefits, hours, skills, duties, working conditions, seniority, or supervision unique to them.⁶ Like the office clerical employees in the legal department, accounting and finance department, and tax department, they are paid a salary, work approximately the same hours, and receive the same benefits. They all have a one hour lunch period and are subject to the rules and regulations contained in the same employee handbook. They all have approximately the same qualifications, training, and skills. Although there are some differences in the immediate supervision of the various departments, all departments ultimately report to Rogantino and McGrath. Peterson handles all the departments' human resource issues.

There has been interchange of employees between the settlements department and the legal department and the operations department. At least one employee works in both the operations department and in the legal department. There is a great deal of contact between the employees of the operations department and all the other departments. Also, employees in the settlements department, the finance and accounting department, and the tax department have daily contact. The functions of some of the departments are integrated. Customer service department employees or operations department employees perform functions also done by other departments.

I find that the unit, as sought by the Petitioner, of office clerical employees confined to the Employer's operations, settlements, and customer service departments, is inappropriate in that it is not a distinct and homogeneous grouping of employees whose interests are separate and distinct from the Employer's office clerical employees in the legal department, accounting and finance department, and tax department. Rather, the centralized control over daily operations

⁶ As there is no evidence of any history of collective bargaining, this factor is not a consideration.

and labor relations, lack of autonomy, common supervision, identical skills, duties, and other terms and conditions of employment, and contact among employee require the conclusion that the interests of office clerical employees in the operations, settlements, and customer service departments are effectively merged with those of the office clerical employees in the legal department, accounting and finance department, and tax department.⁷

SUPERVISORY STATUS OF ERIN SHEEHAN:

FACTS

The Employer has employed Erin Sheehan since October 2000. She first worked in the settlement department with the title of settlement administrator. Sometime before the summer of 2003, she moved to the operations department where she was the only employee performing a function known as direct deposit.

In about August 2003, Sheehan asked McGrath and Rogantino if Sabrina Greenfield could be transferred from the settlements department to the operations department to help with direct deposit. They approved the request. Sheehan showed Greenfield how to perform the direct deposit function and directed her work.

In about January 2004, Rogantino told Sheehan that he wanted her to supervise all the other employees in the operations department, except for Greenfield. He said the assignment was only for the time being, until somebody else was brought in to do the job. After this conversation, Sheehan began to assign work to the operations department employees and to direct their work. She also decided, when asked by operations department employees, if they could go home early. During this time, she had the authority to transfer, hire, suspend, layoff, recall and discharge employees, although there is no evidence that she exercised this authority. The Employer did not give her any particular title, but she gave herself the title of “operations manager.” She received a pay increase because of her job duties.

In about February 2004, Rogantino said that McGrath’s sister, Kathy Colaboro, would be taking over the supervisory duties in the operations department. However, for reasons not revealed in the record, Colaboro left the Employer and never assumed the supervisory duties. Sheehan continued to perform the tasks of assigning and directing the work in the operations department.

At about the end of April 2004, Rogantino told Sheehan that he had hired John Ptak and that Ptak would take over the supervision of the operations department. Rogantino said that the employees who had been reporting to Sheehan would now be reporting to Ptak.

⁷ With respect to the seven sales department employees, I find that the record is insufficient to determine whether they should be included in the clerical unit. Although sales employees perform some office clerical work, some of their time is spent away from the office meeting with customers and prospective customers. The record does not reveal if their office clerical work is their primary function or whether they primarily meet with customers and prospective customers away from the office. Accordingly, I shall permit them to vote under challenge.

On May 6, 2004, at Ptak's request, Sheehan sent an e-mail to the operations department employees. Copies went to Rogantino and Ptak. In the e-mail, Sheehan told the operations department employees that "Starting today you will report to John directly."

Since May 6, 2004, Sheehan no longer assigns or directs work in the operations department, although she tries to help operations employees with their job duties if they ask her for help. She continues to receive the same pay as she did prior to May 6, 2004. Her job duties include doing direct deposit, dealing with certain bank deposits, dealing with the vehicle leasing company, and cutting checks to another vehicle leasing company. No other employee performs these tasks.

Since May 6, 2004, Ptak has overseen the operations department, as well as the settlements department and the customer service department. In a meeting with the employees from these departments, he told them that they were to report to him. Since May 6, 2004, he has assigned and directed work in those departments.

ANALYSIS

The term supervisor is defined in Section 2(11) of the Act, as including "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The definition contained in Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the supervisory class. *Mississippi Power Co.*, 328 NLRB 965, 969 (1999), citing *Ohio Power v. NLRB*, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Thus, the exercise of a Section 2(11) authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status. *Chicago Metallic Corp.*, 273 NLRB 1677 (1985). As pointed out in *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in *Hydro Conduit Corp.*: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." See also *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992). In this regard, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. *Bowne of Houston*, 280 NLRB 1222, 1224 (1986).

The party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. *Kentucky River Community Care, Inc.*, 121 S. Ct. 1861, 1867 (2001). Conclusory evidence, "without specific

explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Similarly, it is an individual's duties and responsibilities that determine his or her status as a supervisor under the Act, not his or her job title. *New Fern Restorium Co.*, 175 NLRB 871 (1969).

The record reveals that Sheehan may have been a statutory supervisor between January 2004 and the end of April 2004. During this time, she assigned and directed work, and approved time off. Apparently, she also had authority to transfer, hire, suspend, layoff, recall, and discharge employees, although she never exercised this authority.

In any event, it is clear from the record that Sheehan's supervisory status was never meant to be anything more than temporary, and that it ceased as of May 6, 2004. Thus, at the time Rogantino told her that she was assigned to supervise employees in the operations department, he also told her that the assignment was only for the time being. Within a few weeks thereafter, Rogantino told her that she was being replaced by Colaboro. After the Colaboro replacement failed to occur, it was only two months before Rogantino again informed Sheehan she was being replaced. This time, the replacement actually occurred, and Ptak fully assumed the supervision of the operations department. This change in authority was documented by Sheehan's May 6, 2004 e-mail sent to the operations department employees.

There is no record evidence that Sheehan has had any supervisory authority or has performed any supervisory duties since May 6, 2004. She no longer assigns or directs work in the operations department. The facts that she helps operations employees with their job duties, and that she continues to receive the same pay as she did prior to May 6, 2004, do not establish supervisory authority. Her job duties include doing direct deposit, dealing with certain bank deposits, dealing with the vehicle leasing company, and cutting checks to another vehicle leasing company. None of these tasks, which she performs alone, indicate the possession of supervisory status. Accordingly, I find that Sheehan is a non-supervisory employee and is a unit employee eligible to vote in the election.⁸

RELATIVES OF MANAGEMENT:

FACTS

David Kenyon is a brother-in-law of the Employer's owner, Thomas McGrath, and is considered a jack-of-all-trades for the Employer. He currently monitors the Employer's finances. He keeps irregular hours, and can come to work and leave as he pleases. In the past,

⁸ At the hearing, the Employer maintained that settlement department employee Kristen Hayden and customer service department employee Paula Ivory were statutory supervisors and should be excluded from the bargaining unit. Nevertheless, the parties stipulated at the hearing that if I were to find that there was insufficient evidence to determine their supervisory status, then they would vote in the election under challenge. Since the evidence presented during the hearing regarding these employees was conclusory and without specific explanation of whether they exercised independent judgment, I conclude that the evidence is indeed insufficient to determine their supervisory status. Accordingly, I shall permit them to vote under challenge.

Kenyon held several different positions for the Employer, including overseeing IT, human resources, and banking. At times during his employment, he has had employees reporting to him, and he has had the power to hire and fire employees.

Sabrina Greenfield is McGrath's niece. As noted above, she works in the operations department, to which she transferred from the settlements department. She does not have any supervisory authority. Her work hours are determined by a regular assigned schedule. She shares the same terms and conditions of employment as the employees in the bargaining unit. She has infrequent contact with McGrath away from the workplace. There is no record evidence that she receives any special treatment as a result of her relationship with McGrath.

ANALYSIS

Although the standard for inclusion in the bargaining unit is community of interest, in cases of relatives of corporate shareholders the inquiry as to community of interest is expanded to include consideration of the amount of stock owned by the relative shareholders, whether the employee is a dependent of the stockholder, and similar considerations. The individual in question may also be excluded if their job duties reflect a special relationship. *Blue Star Ready-Mix Concrete Corp.*, 305 NLRB 429 (1991).

David Kenyon, McGrath's brother in law, monitors the Employer's finances and has held several different positions with the Employer, including overseeing IT, human resources, and banking. He has had employees reporting to him, and his job duties have included the power to hire and fire employees. He also keeps irregular hours, and can come to work and leave as he pleases. I find that these factors are indicative of a special relationship that requires him to be excluded from the bargaining unit.

Sabrina Greenfield, McGrath's niece, works in the operations department and has no supervisory authority. She shares the same hours of work and terms and conditions of employment as the employees in the bargaining unit. Most significantly, there is no record evidence that she receives any special treatment as a result of her relationship with McGrath. Accordingly, I find that Greenfield shares a community of interest with other bargaining unit employees and should be included in the bargaining unit.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time office clerical employees employed by the Employer at its Braintree, Massachusetts facility in the operations department, settlements department, customer service department, legal department, accounting and finance department, and tax department, but excluding managerial employees, professional employees, guards, and supervisors as defined in the Act.

It appears that there are approximately 39, to as many as 48, employees in the unit found appropriate. I reach this conclusion based on the fact that the figure of 56 employed at the

Braintree location included CEO McGrath, the five stipulated supervisors or managers, a second attorney in the legal department, and David Kenyon. It also appears that the unit found appropriate is substantially larger than the petitioned-for unit. I base this conclusion on the fact that the petition lists a total of only 18 in the unit that was sought, which was limited to the operations, settlement, and customer service departments.

DIRECTION OF ELECTION⁹

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by International Brotherhood of Teamsters, Local 25, AFL-CIO.

LIST OF VOTERS¹⁰

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

⁹ Because the unit found appropriate herein is significantly larger than the Petitioner's proposed unit, the Petitioner shall have a reasonable period of time, not to exceed 10 days from the date of this Decision, to submit additional evidence of interest in the unit found appropriate, unless a Request for Review is timely filed by the Petitioner, in which event the submission of the additional showing of interest will be due, if appropriate, 10 days from the date of the Board's action on the Request for Review. Should the Petitioner not wish to proceed to an election in the broader unit, it will be permitted, upon request, to withdraw its petition without prejudice.

¹⁰ The Excelsior List may be used initially by the Regional Director in determining the adequacy of the showing of interest. The Regional Director shall make the list available to all parties to the election when she has made the determination that the Petitioner has made an appropriate showing of interest among the employees in the unit found appropriate.

Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before July 2, 2004. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by July 9, 2004.

/s/ Rosemary Pye
Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 25th day June, 2004.

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of

NICA, Inc.

Employer

and

International Brotherhood of Teamsters Local 25, AFL-CIO

Petitioner

CASE 1-RC-21781

DATE OF MAILING
June 25, 2004

AFFIDAVIT OF SERVICE OF copy of Decision and Direction of Election

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid certified/regular mail upon the following persons, addressed to them at the following addresses:

NICA, Inc.
Mr. Tom McGrath
761 Granite Street
Braintree, MA 02184

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Mr. Michael Murphy
Assistant Director and Special Counsel
25 Louisiana Avenue, N.W.
Washington, DC 20002

/s/ Lillian Stern
Lillian Stern

Subscribed and sworn to before me this 25th
day of June, 2004.

DESIGNATED AGENT

/s/ Nancy J. Schoenfeld

NATIONAL LABOR RELATIONS BOARD